

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

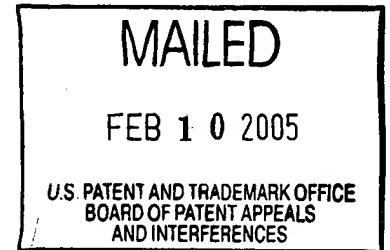
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DIETMAR PRZYTULLA and WILHELM PETER MEULEMAN

Appeal No. 2004-2145
Application 09/525,526

HEARD: January 26, 2005



Before FRANKFORT, PATE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 27, 28, 29, 35 and 36. Claims 30 through 33 and 37 through 45, which are the only other claims remaining in the application, stand allowed. Claims 1 through 26 and 34 have been canceled.

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Appellants' invention relates to a plastic blow-molded barrel having a cross-sectional configuration that is approximately square-shaped, with four substantially identically shaped, convex side surfaces connected at rounded corners, and including a horizontal stiffening element that is formed as an indentation running along a circumference of the barrel body and located between the top surface and bottom surface of the barrel. Independent claim 27 is representative of the subject matter on appeal, and a copy of that claim can be found in Appendix A of appellants' brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Roper	3,780,899	Dec. 25, 1973
Shaffer et al. (Shaffer)	3,985,257	Oct. 12, 1976
Wheaton et al. (Wheaton)	WO 95/30585	Nov. 16, 1995
Mauser-Werke GmbH, G 94 08 722.9 (DE '722.9) Nov. 10, 1994		

Claims 27 through 29 and 36 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Wheaton.

Claims 27 through 29, 35 and 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Roper in view of Shaffer.

Claims 27 through 29, 35 and 36 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over DE '722.9 in view of Roper.¹

Rather than reiterate the conflicting viewpoints advanced by appellants and the examiner regarding the above-noted rejections, we refer to the examiner's answer (mailed April 30, 2003) and appellants' brief (filed January 30, 2003) for a full exposition thereof.

¹Like appellants in their brief (footnotes 1 through 5), we note the numerous instances in the final rejection and advisory action where the examiner has erroneously referred to and treated canceled claims and/or used incorrect reference number identifiers. However, what is particularly troubling is that the examiner has repeated each and every one of those same errors in the examiner's answer, notwithstanding that appellants made note of and highlighted them in the brief. Such gross inattention to detail complicates the decision making process and should be rectified. For purposes of appeal, we have disregarded the examiner's treatment of canceled claims 34, 14, 21 and 25 in the various rejections set forth in the examiner's answer and have focused on Mauser-Werke GmbH, G 94 08 722.9 (DE '722.9) in evaluating the last rejection noted above.

OPINION

Having carefully reviewed the anticipation and obviousness issues raised in this appeal in light of the record before us, we have made the determinations which follow.

Looking first to the examiner's rejection of claims 27 through 29 and 36 under 35 U.S.C. § 102(b) as being anticipated by Wheaton, we agree with appellants that Wheaton does not teach or disclose a plastic, blow-molded barrel having a cross-sectional configuration that is approximately square-shaped, with four substantially identically shaped, convex side surfaces connected at rounded corners. The examiner's position that a barrel configured in the manner seen in Figures 2 and 4 of Wheaton has sidewalls that are "concave on the outside as seen from the top of the container to the bottom of the container" and therefore provides an inside surface of the sidewalls which is convex (answer, page 3), is strained at best and of no particular moment, since it is clear to us that one of ordinary skill in the art at the time of appellants' invention would have understood the four substantially identically shaped, convex side surfaces

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set forth in claim 27 on appeal to be the exterior side surfaces of the four barrel walls as shown in Figure 1 of the application drawings.

In that regard, it is apparent from viewing Figure 4 of Wheaton and the description thereof, that the barrel shown therein is intended to be square or rectangular, with four flat exterior side surfaces connected at rounded corners. Moreover, contrary to the examiner's position, the taper of the flat sidewalls of the barrel in Wheaton from the top and bottom toward the central indentation (20) does not provide convex barrel side surfaces as set forth in appellants' claim 27. Since the barrel in Wheaton clearly does not have a cross-sectional configuration that is approximately square-shaped, with four substantially identically shaped, convex side surfaces connected at rounded corners, we will not sustain the examiner's rejection of claim 27, or the claims which depend therefrom, under 35 U.S.C. § 102(b) as being anticipated by Wheaton.

As for the examiner's rejection of claims 27 through 29, 35 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Roper in view of Shaffer, we note that Roper discloses a metal container (20) having a rectangular tubular body section (21) sealingly joined to a top (50) and bottom (70) panel by curled lock seams (61) and (79) respectively. In column 8, lines 48-52, Roper notes that the lock seams (61) and (79) provide a dual function, i.e., the seams join the end panels to the side walls of the container and are the load carrying members, but also act as bumpers so as to prevent damage to the container upon accidental impact. In contrast, Shaffer discloses a plastic blow molded industrial sized drum (10) with integrally formed rolling hoops (12, 13), a domed top (18) having necked bung holes (17, 19) and a bottom (14) configured to have a chine (15) and sump pad forming a depression (16) that extends inward from the chine.

Contrary to the examiner's view, we do not find that it would have been obvious to one of ordinary skill in the art at the time of appellants' invention to "employ the plastic and blow molding of Shaffer et al in the container of Roper to provide a container that will not corrode and to provide a method of producing the container rapidly" (answer, page 4). Like

appellants, absent hindsight, we find no teaching, suggestion or motivation in the applied prior art to modify the particular form of metal container disclosed in Roper in the manner urged by the examiner. As noted on page 10 of the brief, Roper's container, with its metal construction, separate metal top and bottom panels and curled lock seams, is the antithesis of Shaffer's plastic blow molded drum. For that reason, we will not sustain the examiner's rejection of claim 27, or the claims which depend therefrom, under 35 U.S.C. § 103(a) as being unpatentable over Roper in view of Shaffer.

The last of the examiner's rejections for our review is that of claims 27 through 29, 35 and 36 under 35 U.S.C. § 103(a) as being unpatentable over DE '722.9 in view of Roper. In this instance, we note that the examiner appears to be relying solely on the generally rounded rectangular barrel configuration seen in Figures 1a-1c and 6 of DE '722.9 and no other teachings of that document.² More particularly, the examiner has found (answer,

² In light of this fact, we limit our consideration to only the drawings of DE '722.9 and particularly to Figures 1a-1c and 6 of that document. We also note that the examiner appears to have ignored the directive sent April 29, 2002 by Stephen G. Kunin, Deputy Commissioner for Patent Examination Policy, concerning "Reliance upon abstracts and foreign language documents in

pages 4-5) that the container seen in DE '722.9 is rectangular shaped and does not teach the substantially identically shaped four side surfaces giving an approximately square shape to the barrel or a horizontal indentation-stiffening element as set forth in claim 27 on appeal. To account for these differences the examiner relies on the metal container of Roper, contending that it would have been obvious to employ the shape in Roper in the container of DE '722.9 "to provide an alternative shape for the container" and to provide the container of DE '722.9 with an indentation like that seen at (29) of Roper so as to stiffen the sidewall of the container.

Like appellants (brief, pages 11-12), absent hindsight, we find no teaching, suggestion or motivation in the applied prior art to modify the particular form of container seen in Figures

support of a rejection." In that memo it is stated that "no appeal should be forwarded to the Board of Patent Appeals and Interferences for decision where: 1) a rejection is supported in whole or part by an abstract without reference to the underlying document . . . or 2) a rejection is supported in whole or part by a prior art document not in the English language, unless accompanied by a translation of the prior art document into English." The memo expressly indicates that an examiner relying on a document in a language other than English must obtain a translation so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection.

1a-1c and 6 of DE '722.9 in the manner urged by the examiner. We again point out that Roper discloses a container formed entirely of metal having separate metal top and bottom panels (50, 70) joined to a rectangular tubular metal body section (21) by curled lock seams and with a concave belt (29) extending completely around the periphery of the tubular metal body. By contrast, the container of DE '722.9 appears to be formed of a molded plastic material and provided with the particular configuration shown in Figures 1a-1c so as to be better accommodated on a pallet like that shown in Figure 6 of that reference. Thus, while it might be possible to change the shape of the molded plastic container of DE '722.9 to be approximately square, with four substantially identically shaped, convex side surfaces connected at rounded corners, as generally shown in Roper, we find no basis in the disparate teachings of the applied references for importing the concave belt (29) of Roper's tubular metal body section (21) into the plastic container of DE '722.9. Nor has the examiner provided any factual basis to indicate why the molded plastic container of DE '722.9 would necessarily need a concave belt like that found in Roper's metal container.

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As our court of review indicated in In re Fritch, 972 F.2d 1260, 1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992), it is impermissible to use the claimed invention as an instruction manual or "template" in attempting to piece together isolated disclosures and teachings of the prior art so that the claimed invention is rendered obvious. For the above reasons, we will not sustain the examiner's rejection of claim 27, or the claims which depend therefrom, under 35 U.S.C. § 103(a) as being unpatentable over DE '722.9 in view of Roper.

In light of the foregoing, we will not sustain the examiner's rejection of claims 27 through 29 and 36 under 35 U.S.C. § 102(b) as being anticipated by Wheaton, or that of

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claims 27 through 29, 35 and 36 under 35 U.S.C. § 103(a) as being unpatentable over Roper in view of Shaffer, or DE '722.9 in view of Roper. Thus, the decision of the examiner is reversed.

REVERSED

Charles E. Frankfort

CHARLES E. FRANKFORT)
Administrative Patent Judge)

William R. Pate III)

WILLIAM R. PATE III)
Administrative Patent Judge)

Jennifer D. Bahr

JENNIFER D. BAHR)
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